

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICKY COOPER.

Petitioner,

**JUDGE SMITH
MAGISTRATE JUDGE KEMP
CASE NO. 2:03-cv-479
CRIM. NO. 2:99-cr-061**

v.

UNITED STATES OF AMERICA, Warden,

Respondent.

OPINION AND ORDER

On May 29, 2007, the Magistrate Judge issued a *Order and Report and Recommendation* recommending that the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §2255 be dismissed, and denying petitioner's request for discovery and request to unseal jury questionnaires. Doc. No. 131. Petitioner has filed objections to the Magistrate Judge's *Order and Report and Recommendation*. Petitioner also requests thirty days within which to amend his petition to "develop all of the issues" he has previously raised. *See Objections*. Respondent opposes petitioner's request. Doc. No. 136. Petitioner has filed objections and a reply. Doc. No. 137. For the reasons that follow, petitioner's request for an extension of time to amend his petition is **DENIED**. Petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**, and this action hereby is **DISMISSED**.

Petitioner filed the instant motion to vacate, set aside, or correct sentence on May 27, 2003. Doc. No. 76. Petitioner contends that, on May 18, 2004, the Court granted his request to amend his petition with new claims, and that he has not yet had the opportunity to do so. *See Objections and*

Reply, at 2. This argument is not persuasive. On May 18, 2004, the Court granted petitioner's request for a stay of proceedings, noting that petitioner stated that his §2255 petition may become moot, or he may wish to amend his 2255 petition, depending on the outcome of his motion for a new trial. *See* Doc. No. 93. Pursuant to his request, proceedings in this case were stayed for more than three years, until September 26, 2006, in order to allow petitioner to litigate his motion for a new trial.¹ The Court also granted petitioner's December 4, 2006, request for an extension of time until January 30, 2007, to file a response to the Return of Writ. Doc. Nos. 112, 113. Thus, petitioner has had more than adequate time to develop and present all of his arguments in support of his federal habeas corpus petition. Petitioner appears to indicate that he may be able to further develop his arguments if discovery is granted in this case; however, for the reasons discussed in the Magistrate Judge's *Order and Report and Recommendation*, this Court likewise concludes that discovery is not warranted here.

Petitioner objects to all of the Magistrate Judge's recommendations. He contends that the *Order and Report and Recommendation* is "false and not supported by the record." *See Objections*. He also complains that the Magistrate Judge improperly issued recommendations in this case because the docket does not reflect any formal designation by the District Court to the Magistrate Judge under 28 U.S.C. §636(b)(1)(B) .

Petitioner's procedural arguments are not persuasive. 28 U.S.C. §636(b)(1)(B), (C),

¹ On February 3, 2005, the stay was lifted; however, on March 16, 2005, the Court granted petitioner's request for a continued stay. Doc. Nos. 96, 99. On October 18, 2006, petitioner again filed a request for a continued stay of proceedings pending resolution of his petition for a writ of *certiorari* with the United States Supreme Court. Doc. No. 110. The Court denied petitioner's request. Doc. No. 111. On November 27, 2006, the United States Supreme Court denied petitioner's petition for a writ of *certiorari*. Doc. No. 114.

provides:

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [FN1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

[FN1] So in original. Probably should be "post-trial".

Id. Further, under General Order of the United States District Court for the Southern Ohio, Eastern Division, 95-2,

any and all motions of any type... which are filed in... applications for post-trial relief filed by an individual convicted of a criminal offense, and prisoner petitions challenging conditions of confinement, are hereby REFERRED to the assigned Magistrate Judge for the conduct of such proceedings as may be necessary and the issuance of a Report and Recommendation, without the need for the entry of a specific order of reference.

Id. Thus, an entry of designation of the Magistrate Judge is not required under the General Orders of this Court.

Petitioner has not made any specific arguments in support of his substantive objections other than his general claim that the *Report and Recommendation* is “false” and not supported by the record. Nevertheless, pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of the *Order and Report and Recommendation*. This Court has reviewed the entire record in this case. For the reasons detailed in the Magistrate Judge’s *Order and Report and Recommendation*, petitioner’s objections are **OVERRULED**. The *Order and Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH

United States District Judge